IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

CRL.A.No. 1699 of 2006(C)

SC.126/2005 of ADDL. SESSIONS COURT., ADHOC - I , MANJERI

APPELLANT: ACCUSED

VARGHESE S/O.ULAHANNAN,
CONVICT NO.3600, CENTRAL PRISION,
KANNUR.

BY ADV. SRI.E.S.ASHRAF(STATE BRIEF)

RESPONDENTS: COMPLAINANT
---

1. STATE OF KERALA,
REP.BY S.I. OF POLICE,
AREACODE P.S., MALAPPURAM DISTRICT.

2. STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/03/2007, THE COURT ON **05/06/2007** DELIVERED THE FOLLOWING:

V. RAMKUMAR, J.

* * * * * * * * * * * * * * * * * * * *

Crl.Appeal No. 1699 of 2006

* * * * * * * * * * * * * * * * * * * *

Dated, this the 6th June 2007

JUDGMENT

In this appeal preferred from the Central Prison, Kannur the appellant who was the sole accused in S.C. 126 of 2005 on the file of the Addl. Sessions Court (Adhoc -II) Manjeri, challenges the conviction entered and the sentence passed against him by that court for offences punishable under Sections 498 A and 306 A I.P.C.

2. The case of the prosecution ca be summarised as follows:-

The accused Varghese married deceased Roobi on 8-9-1997 in accordance with the customary rites of the parties. While she was residing along with the accused in the matrimonial home she had taken exception to his drinking habits. She had also requested him to reconstruct the house. Accused used to willfully find fault with her stating that she was not beautiful and that she was black in complexion. On account of the constant cruelty meted out to the deceased by the accused, she finally committed suicide by hanging at about 2 p.m. on 6-12-003. The

accused has thereby abetted her to commit suicide and has also committed matrimonial cruelty thus punishable under Sec. 306 and 498 A I.P.C.

3. On the accused pleading not guilty to the charge framed against him by the court below for the aforementioned offences the prosecution was permitted to adduce evidence in support of it's case.

4. The prosecution altogether examined 13 witnesses as P.Ws 1 to 13 and got marked 14 documents as Exts. P1 to P14.

5. After the close of the prosecution the accused was questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence.

6. Since the trial court did not consider this a fit case for recording an order of acquittal under Sec. 232 Cr.P.C., the accused was called upon to enter on his defence and to adduce any evidence which he might have in support thereof. He did not adduce any defence evidence.

7. The learned Addl. Sessions Judge, after trial as per

judgment dated 27-6-2006 found the appellant guilty of the offences punishable under Sections 498 A and 306 I.P.C. and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- and on default to pay the fine to undergo rigorous for six months and rigorous imprisonment for 5 years and to pay a fine of Rs. 5,000/- and on default to pay the fine to suffer rigorous imprisonment for six months respectively. It is the said judgment which is assailed in this appeal by the accused.

8. I heard Advocate Sri. E.S. Ashraf, the learned counsel who defended the appellant on State Brief and Adv. Sri. K.S. Sivakumar, the learned Public Prosecutor who defended the State.

9. The only point which arises for consideration is as to whether the conviction entered against and the sentence passed against the appellant are sustainable or not ?

10. P.W.1 (Dr.V.K. Rajendra Prasad) proved Ext.P1 post mortem certificate as per which the post mortem findings were consistent with death due to hanging. P.W. 2 (Lawrence) is an attester to Ext.P2 inquest report prepared by the investigating officer. P.W.3(Bhaskaran) is a witness to Ext.P3 scene mahazar.

P.W.4 (Father Mathew Peruvelil) is the vicar of St. Mary's Church, Peruvannamuzhi who proved Ext.P4 marriage register extract in which the date of marriage between the appellant and the deceased Roobi was on 8-9-1997. P.W.5 (Dr, Hames Vamattathil) is the vicar who solemnised the marriage. P.W.6 the attester to Ext.P5 seizure mahazar under which Ext.P4 marriage register was seized. P.W.7 (Sunny) is the brother of the deceased. He proved Ext.P6 first information statement in which he has mentioned that his deceased sister had told him that the accused used to tell her that she was not beautiful. P.W. 8 (Annamma) is the mother of the deceased. P.W. 9 (Chinnamma) is the elder sister of the deceased. P.Ws 10 and 11 are neighbours of the accused and both of them turned hostile to the prosecution. P.W.12 (Chathan) is the A.S.I. of of Areacode Police Station who registered Ext.P11 F.I.R. P.W.13 (P.V. Moosa) is the Dy.S.P. who conducted the investigation.

11 The learned counsel who defended the appellant made the following submissions before me in support of his fervent plea for acquittal of the accused:-

In Ext.P6 F.I. statement what is stated is that the deceased committed suicide on account of some mental agony. What

exactly was the agony has not been stated. But during the stage of evidence P.Ws 7 to 9 would come out with improved versions. The medications made mention of by P.W.7 has not been examined. In Ext.P6 F.I. statement P.W.7 has not revealed the ill-treatment allegedly meted out by the accused. There cannot be any automatic presumption of cruelty under Sec. 498 A I.P.C. Vide Para 13 of **Hans Raj v. State of Haryana - 2004 (12) SCC 257.** Moreover, P.Ws 7, 8 and 9 are near relatives of the deceased and are therefore interested witnesses. Mere harassment or infliction of injury by the husband is not sufficient to attract the "willful conduct" envisaged by Sec. 498 A I.P.C. **(Vide Basheer v. State of Kerala - 2004 (3) KLT SN 19) .** P.W.13 the investigating officer has proved the omissions in the 161 statements of P.Ws 7, 8 and 9. The observation of the trial court that the injuries on the body of deceased Roobi were ante mortem injuries do not appear to be correct since there would not have been any opportunity for the accused to torture his wife.

12. I am afraid that I cannot agree with the above submissions. It is true that Ext.P6 F.I. statement does not mention about the details of the ill-treatment. N o doubt, in Ext.P4 marriage register there is a correction in date of marriage.

The date originally shown as 8-9-1996 has been corrected as 8-9-1997. But that does not support the defence plea that the marriage register was correct so as to make the offence within six years of marriage as contemplated by Sec. 498 A I.P.C. A perusal of the register shows that the entries therein start from the year 1997 only and the last entry therein is dated 20-10-1997. Hence, 8-9-1996 which has been correct as 8-9-1997 is for an obvious mistake. The appellant had no case that his marriage was in the year year 1996. It is true that P.W.7 to 9 have not deposed about any immediate provocation for the deceased to commit suicide but the credible testimonies of this witnesses will come to show that the accused was constantly inflicting mental , corporal torture on Roobi with demands for more money. He was inflicting physical torture on her after coming home fully drunk. When P.W.7 to 9 dared to intervene while the accused was meting out cruelty to his wife , the accused used to attack them also. he was finding out one reason or other to assault her. He used to say that she was black in complexion and she was not beautiful. He had no qualms in battering her in the presence of her mother, sister and brother. The learned Addl. Sessions Judge who had the unique advantage of seeing the witnesses and assessing their

credibility has chosen to accept the heartrending tragedies of Roobi at the hands of the appellant. No doubt, there are omissions in the testimony of P.W7, 8 and 9. But the defence did not invite the attention of this witnesses to th0ose omissions which were not properly proved. This was a case where the court has rightly invoked the presumption under Sec. 113 A of the Evidence Act. What has to be considered by the court is the sensitivity of the particular wife and not the behavioural pattern of a hypothetical wife - **Vinodan @ Bose v. State of Kerala - 2007 (1) KHC 291.** It was unable to endure the tormenting cruelty by the appellant that Roobi finally decided to end her life. Her act is attributable to the willful conduct of the accused who knew or is presumed to know the frailties of her mind. The conviction was rightly entered against the appellant.

The sentence imposed against the appellant also cannot be harsh ,disproportionate or excessive. I do not find good ground to interfere with the punishment as well. In the result, this Appeal is dismissed confirming the conviction entered and the sentence passed against the appellant.

V.RAMKUMAR, J

CRL.A. NO. 1699 OF 2006

JUDGMENT

DATED: 06-06-2007

V. RAMKUMAR,
(JUDGE)

ani.